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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,790	07/02/2001	Masao Nishina	IS10-002	1821
21567	7590	10/06/2005	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			SMITH, TRACI L	
			ART UNIT	PAPER NUMBER
			3629	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/898,790

Applicant(s)

NISHINA, MASAO

Examiner

Traci L. Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 1-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to papers filed on July 13, 2005.

Claims 1-10 have been amended.

Claims 1-10 are pending.

Claims 1-10 are rejected.

### ***Claim Objections***

1. Claims 1-10 are objected to because of the following informalities: Claims were amended to recite a method, however there are several inconsistencies as to whether the applicant is claiming a system or method. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 3 and 8 recite the limitations "the email" an in last sentence of claim 3 and "the conditions" in last line of claim 8. There is insufficient antecedent basis for these limitations in the claims.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-2 and 4-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
5. The basis of this rejection is set forth in a two-prong test of:

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(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

6. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

7. In the present case, Claims 1-2 and 4-10 merely imply the intended use of the technological arts. It is not evident how the process is being advanced and/or how the technology is being used or applied.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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9. Claims 1- 10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Pub. US2002/002636 A1 Dunaway Jr. Method and System for Implementing Remote Independent Culinary Preparation Service

10. As to claim 1 Dunaway teaches food menus and recipes for a specific time frame. (Pg. 1 ¶12)

-a food list with food data necessary for menu.(Pg. 2 ¶ 13).

11. As to claim 2 Dunaway teaches the food material as a shopping list to be used to purchase material.(Pg. 1 ¶ 9)

12. As to claim 3 Dunaway teaches a shopping list to be transmitted to a portable unit. (Pg. 3 ¶ 45).

13. As to claim 4 Dunaway teaches a food list provided to a grocery store.(Pg. 5 ¶ 64).

14. As to claim 5 Dunaway teaches food list materials delivered to user.(Pg. 5 ¶ 64).

15. As to claim 6 Dunaway teaches providing the option for the user to add additional items to food material list.(Pg. 5 ¶ 65).

16. As to claims 7 and 8 Dunaway teaches alternate recipes based on user conditions.(Pg. 6 ¶ 76).

17. As to claim 9 Dunaway teaches the recipe including images and graphics.(Pg. 10 ¶ 133).

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18. As to claim 10 Dunaway teaches the predetermined time.(Pg. 1 ¶ 12).

***Response to Arguments***

19. Applicant's arguments filed July 13, 2005 have been fully considered but they are not persuasive. As to applicants arguments that Dunaway fails to teach "quantities" for the food items. The examiner notes that applicant fails to positively recite that "quantities" are a component of the list. Regardless examiner maintains that Dunaway teaches food quantities in the list. In paragraph 0012 teaches an ingredient list which implies identifying how much of specific food is required. Examiner also draws applicants attention to paragraphs 0061-0064 where the prior art repeatedly addresses how the user is able to change the portion sizes of a recipe, meaning they are able to identify the quantity need. As applicants arguments are not persuasive rejections stand as stated in the previous office action and are further restated above.

20. Examiner notes applicant failed to address rejection under USC 112 2<sup>nd</sup> Paragraph as lacking antecedent basis. The amendments do not overcome these rejections; again rejection are maintained and restated above.

21. As to applicants arguments regarding rejections under 35 USC 101 amendments fail to overcome rejection as the steps of the method are merely implemented as a human process.

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Smith whose telephone number is 572-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TLS



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